

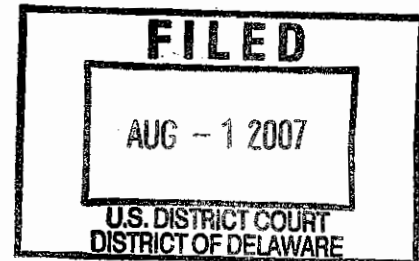
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THOMAS R. MILLER
Plaintiff,

C.A. No. 06-349 GMS

V.

DR. MAGGIE BAILEY CMS,
and FIRST CORRECTIONAL
MEDICAL, INC.,
Defendants.



PLAINTIFF'S PETITION AGAINST DEFENDANT
FIRST CORRECTIONAL MEDICAL INC, TO
PROVE THEIR LIABLE FOR EMPLOYER, DR.
MAGGIE BAILEY NEGLIGENCE, FOR NOT
MONIRING PLAINTIFF WHOM WAS TAKEN
IRON PILLS TWICE A DAY, THAT LED
TO BEING OVERMEDICATED, WHICH
CAUSED PLAINTIFF TO HAVE ACID REFLUX
DISEASE.

TO PROVE SUPERVISORY LIABILITY:
CIVIL RIGHTS 78-1336

TO impose supervisory liability UNDER §1983 on government Contractor for actions of its employees, Plaintiff must show that there was specific Supervisory practice or procedure that Contractor failed to employ, and that: (1) existing custom and practice without specific practice or procedure created unreasonable risk of Constitutional Violation, (2) Contractor was aware that this unreasonable risk existed, (3) Contractor was indifferent to that risk, and (4) Contractor's failure to follow that

Plaintiff, does not believe that DR. Maggie Bailey improper conduct of duty was done intentionally. But through her carelessness and ignorance but became negligent of unskill performance of duties resulting from such person's Professional relationship with Patients (such as Plaintiff) in his present Complaint.

NEGLIGENCE, as negligent-neglect of business, of health, or of economy. 10 A.2d 203, 205.

Failure to exercise that degree of care which a person of ordinary prudence (a reasonable man [person] would exercise under the same circumstances. The term refers to conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm.

ORDINARY NEGLIGENCE, which is failure to use ordinary care.

Plaintiff (states) that Dr. Maggie Bailey conduct falls below the standard, at the time of receiving and taking the iron medication (Pills) twice a day, for (6) months, for a low Hemaglobin low blood count. He should have been monitored by Dr. Maggie Bailey or Medical staff to see if blood had risen to where its normal, by taken one pill a day, again to where its a normal blood count, off medication. Plaintiff was told by Head Nurse Brenda Horowitz that he's been overmedicated with iron pills, which led to your present condition of having acid reflux disease. The regular R.N.s did not know why I was going through my symptoms, of erosion backing up in my esophagus, or the type of medication I was taking upon their delivering and would not pull my medical record, Yes, Dr. Maggie Bailey is Negligence upon her improper conduct.

Practice or Procedure resulted in Plaintiff's injury. U.S.C.A. Const. Amend. 8; 42 U.S.C.A. § 1983.

VICARIOUS LIABILITY- the imputation of liability upon one person for the actions of another. In tort law, if an employee, EE, while in the scope of his employment for employer, ER, drives a delivery truck, and hits and injures P crossing the street, ER will be vicariously liable, under the doctrine of respondeat superior, for injuries sustained by P. 110 N.W. 2d 29, 34.

SCOPE OF EMPLOYMENT- the range of activities encompassed by one's employment; refers to those acts done while performing one's job duties; [the phrase... (was) adopted by the courts for the purpose of determining a master's liability for the acts of his servants, [and] has 'no fixed legal or technical meaning,' 'the ultimate question is whether it is just that the loss resulting from the servant's acts should be considered one of the normal risks of the business in which the servant is employed which that business should bear.' 145 So. 743, 745. The phrase is "a convenient means of defining those tortious acts of the servant not ordered by the master for which the policy of law imposes liability upon the master." 181 A. 2d 565, 569. The master (usually, the employer) is vicariously liable only for those torts of the servant (employee) which are committed within the scope of his or her employment. See respondeat superior. See also Employers' Liability Acts; Workers Compensation Acts.

RESPONDEAT SUPERIOR - This doctrine is invoked when there is a master and servant relationship between two parties. The "respondeat superior" doctrine stands for the proposition that when an employer, dubbed "master," is acting through the facility of an employee or agent, dubbed "servant," and tort liability is incurred during

the course of this agency due to some fault of the agent, then the employer or master must accept the responsibility. Implicit in this is the common law notion that a duty rests upon every person to conduct his or her affairs so as not to injure another, whether or not in managing the affairs he or she employs agents or servants. See 143 P. 2d 554, 556. This doctrine is civil in its application. See 9 N.W. 2d 518, 521. See scope of employment. Compare Vicarious liability.

EMPLOYERS' LIABILITY ACTS -

Statutes specifying the extent to which employers shall be liable to make compensation for injuries sustained by their employees in the course of employment. 53 AM. JUR. 2d, Master and Servant §§ 341, 353. Unlike workers compensation laws, which have replaced these acts in many states, the employer is made liable only for injuries resulting from his breach of a duty owed the employee - ie, his negligence - and is not strictly liable. 52 So. 878, 880. Like workers compensation, however, many of these acts do abolish the use by the employer of the common law defenses of contributory negligence, assumption of the risk, and the fellow servant rule. See 53 AM. JUR. 2d 354. See also Federal Employers' Liability Acts.

See Carter v. City of Philadelphia, 181 F.3d 339, 357-58 (3d Cir. 1999)

CMS can be held liable for charging Plaintiff for sick call visits and medication, after they taken over the Contract in August 05.

TO impose supervisory liability on FCM for the actions of its employees, [Plaintiff] must show that there "was a specific supervisory practice or procedure that [FCM] failed to employ [9] Sample v. Dietz, 885 F.2d 1099, 1118 (3rd Cir. 1989), and that "(1) the existing custom and practice without that specific practice or procedure created an unreasonable risk [OF Eighth Amendment injury], (2) [FCM] was aware that this unreasonable risk existed, (3) [FCM] was indifferent to that risk," and (4) FCM's failure to follow that practice or procedure resulted in Plaintiff's Miller's injury.

While Plaintiff's complaint does not explicitly set forth such a policy or the existing custom and practice, to require him, a prose inmate plaintiff, to do so and to attribute such to FCM, and show that FCM was indifferent to the risk created, would be "unduly harsh" at this stage. See Carter v. City of Philadelphia, 181 F.3d 339, 357-58 (3d Cir. 1999) holding that inmate Plaintiff cannot be "expected to know without discovery exactly what training policies were in place and how they were adopted." In Plaintiff Miller's complaint, Miller show true facts that he was overmedicated with iron medication [pills] taken twice a day for (6) months, from January to June 04, without ever being monitored by either Physician Dr. Maggie Bailey or Medical staff, that led to his present condition of having acid reflux disease, which Plaintiff takes medication daily for this disease.

These true facts are sufficient to permit further development of the record. See Ward v. Taylor, NO. 04-1391 2006 WL 839402, at *6 (D. Del. March 30, 2006).

WHEREFORE, PLAINTIFF respectfully request entry of judgement in his favor and against First Correctional Medical (ECM) to liquidate a claim, a judicial contest, and a demand for jury trial.

Date: July 26, 2007

THOMAS R, MILLER
Thomas R Miller
1181 Paddock Rd
DCC
SMyrna De 19977

CERTIFICATE OF SERVICE

I, Thomas R. Miller, hereby certify that on this date, I served on the parties below in the manner indicated, Copies of the plaintiff An Affidavit of Merit pursuant to Del. Code Ann. Tit 18 § 6853 TO Dr. Maggie Baileys medical malpractice for being negligent, for overmedicating, for Plaintiff without being monitored that led to having acid reflux Disease which is serious without medication.

TO: Honorable Gregory Sleet
United States District Court
844 N. King Street, Lock box 19
Wilmington, DE 19801-3570

TO: Office of the Clerk
United States District Court
844 N. King Street Lock box 18
Wilmington, Delaware 19801-3570

TO: First Medical Correctional INC
~~6861 North~~ or
205 W. Giaconda way STE 115
Tucson AZ 85704-4350

TO: Balick & Balick LLC
711 North King Street
Wilmington, DE 19801

Thomas R Miller
Thomas R. Miller

DATE: July 26, 2007

1/M Thomas R. Miller

SBI# 144108 UNIT 22-A-V-5

DELAWARE CORRECTIONAL CENTER

1181 PADDOCK ROAD

SMYRNA, DELAWARE 19977



TO: Office of the Clerk
United States District Court
844 N. King Street Lockbox 18
Wilmington DE

19801-3570

U.S.M.
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Legal Mail

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THOMAS R. MILLER
Plaintiff,

C.A. NO. 06-349 GMS

v.

DR. MAGGIE BAILEY
CMS, FIRST CORRECTIONAL
MEDICAL, INC.,
Defendants.



AN AFFIDAVIT OF MERIT *BD scanned*
PURSUANT TO Del Code Ann.
tit. 18. § 6853. TO DR. MAGGIE
BAILEY'S MEDICAL MALPRACTICE
FOR BEING NEGLIGENT, FOR
OVER MEDICATING, PLAINTIFF
WITHOUT BEING MONITORED
THAT LED TO HAVING ACID
REFLUX DISEASE, WHICH
IS SERIOUS WITHOUT MED-
-ICATION.

MALPRACTICE

a professional's improper or immoral conduct in the performance of duties, done either intentionally or through carelessness or ignorance. 134 S.E. 527; 234 N.Y.S. 52, 53. The term is commonly applied to a physician, surgeon, dentist, lawyer, or public officer to denote the negligent or unskilled performance of duties resulting from such person's professional relationship with patients or clients. 72 F. Supp. 394, 399; 236 N.Y.S. 641.

SWORN ON THIS DATE July 26, 2007, FROM
PLAINTIFF Thomas R Miller.

Public Notary

Osman Sammander

OSMAN SAMMANDER
Notary Public
State of Delaware
My Comm. Expires June 14 2008

Thomas R. Miller
1181 Paddock Rd
D.C.C
Smyrna, DE 19977